RESPONSE

Claims 31-34 are pending in this application. The Examiner has rejected claims 2 and 4-31 under the judicially created doctrine of double patenting as being unpatentable over claims 1, 2 and 5-18 of U.S. Patent No. 6,531,537 B2 (Friel) in view of U.S. Patent Number 6,330,487 (Jahn).

Obviousness-type Double Patenting Rejection Over Friel in view of Jahn

The Examiner rejected claims 2 and 4-31 under the obviousness-type double patenting doctrine, over Friel, in view of Jahn, asserting that the dispensation of ingredients at a retail purchase point of sale in the manner disclosed by Jahn is admitted prior art, and one of ordinary skill in the art would know to modify Friel's invention to include Jahn's distributed computer system. Applicants respectfully traverse because Jahn's dispensation method is not admitted prior art.

In Applicants' response to the October 6, 2003 Office Action, Applicants neglected to address a matter Applicants believed was fairly minor, namely, the Examiner's brief statement that "it is well known in the manufacturing business art to provide dispenses [sic] with ingredients at a retail purchase point of sale based upon specification by a retail customer and the Examiner takes Official Notice as such." Obviously, Applicants' argument against the obviousness rejection based on Jahn and Cane was predicated on the basic fact that those references did not disclose Applicants' invention, and were improper to combine in any event. As such, it was unnecessary to address the Examiner's Official Notice. However, now that in the most recent Office Action the Examiner desires to make that Official Notice as "admitted prior art," Applicants take exception.

Firstly, MPEP 2144.03 specifically states that taking Official Notice is supposed to happen only rarely. It also expressly warns: